

**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL
ENVIRONMENTAL APPEALS BOARD**

*In re Department of Natural Resources and
Environmental Control Issuance of Delaware
Recyclable Products, Inc. Landfill Minor Permit
Modification – DRPI Solid Waste Permit SW-15/02*

Order No. 2026-WH-0007

NOTICE AND STATEMENT OF APPEAL TO ENVIRONMENTAL APPEALS BOARD
(MODIFIED PERMIT)

Delaware Recyclable Products, Inc. (“DRPI”), by and through its counsel, submits the instant appeal, pursuant to 7 Del. C. § 6008 and 7 Del. Admin. C. § 105, of the action and decision of the Secretary of Delaware Department of Natural Resources and Environmental Control (“DNREC” or “Department”). Specifically, DRPI appeals herein the issuance of the 71 page Solid Waste Modified Permit SW-15/02 (“Modified Permit” a copy of which is attached as **Exhibit A**, which supersedes a 28-page Solid Waste Permit SW-15/02, as last modified on April 8, 2022, and effective May 25, 2022 (the “Permit,” attached as **Exhibit B**). DRPI notes that the Secretary of DNREC orders DRPI in a April 26, 2026 Notice of Administrative Penalty Assessment and Secretary’s Order No. 2026-WH-0007 (the “Order”), a copy of which is attached as **Exhibit C**, to, among other things, “immediately begin using Department-modified Solid Waste Permit SW-15/02 upon receipt”. DRPI is contemporaneously appealing the Order (“Order Appeal”) which Order Appeal is incorporated by reference and attached hereto as **Exhibit D**.

INTRODUCTION

1. DRPI operates an industrial waste landfill and recycling center located at 246 Marsh Lane, New Castle, Delaware (“DRPI Landfill” or “Landfill”), accepting primarily construction and demolition (“C&D”) waste. Located in a Heavy Industry zone in an existing community area (as defined by New Castle County’s Comprehensive Development Plan), the Landfill is currently permitted to accept construction/demolition debris; dry waste including plastic, rubber, lumber, trees, and vegetative matter; and non-hazardous industrial waste solids if approved by DNREC.

2. The DRPI Landfill is the only privately owned landfill currently operating in the State of the Delaware.¹ and has been operated by DRPI since 1999, almost 30 years. The Modified Permit that is the subject of this Appeal, and the Order that is the subject of a contemporaneous Appeal, are largely the result of evolving policies and practices of the Department inconsistently applied and communicated to DRPI, which have in many instances led to insurmountable challenges by DRPI in attempting to comply with the Department's evolving requests.

3. At all relevant times, hereto, DRPI has engaged and/or made every effort to engage in proactive dialogue with the Department regarding operation of the DRPI Landfill, addressing topics including cover, stormwater management, capping and, notably an evolving contaminated stormwater policy. Stated another way: i) DNREC imposed cover approval requirements that miscalculate the coverage area, and without consideration of the time constraints associated with DRPI receiving the actual approval from DNREC, and then being tasked in short order with finding available fill; ii) DNREC advanced a theory, unsupported in law and fact, deeming stormwater as being contaminated by allegedly coming into contact with landfill waste as a result of the alleged cover problems; and iii) imposed stormwater discharge requirements for the water deemed "contaminated".

4. Aside from the legal and factual deficiencies and inconsistencies associated with DNREC's application of its various programs, DRPI's frustration regarding its dialogue with the Department has been the inability to achieve and/or formalize clear, consistent, communication with DNREC. Many of the alleged violations underlying the Order and presumably driving the issuance of the Modified Permit, were never reduced to a citation or other indication that DNREC

¹ The Delaware Solid Waste Authority (DSWA), a public instrumentality, operates three other landfills across the State.

viewed operational activity as a series of violations that required attention not already being paid by DRPI.

5. DNREC is, among other things, ordering DRPI to immediately adapt its operations pursuant to a 71-page Modified Permit (which supersedes a 28-page permit), and do so contemporaneously with executing on and complying with the Order-imposed 16 additional directives on a 30-to-90-day clock, thereby resulting in conflicting requirements and timeframes.

6. The provisions of the Modified Permit significantly impact DRPI's operations and obligations.

7. The provisions and issuance of the Modified Permit are contrary to law and fact, are arbitrary and capricious, and constitute an abuse of discretion for the reasons set forth above and below.

8. DRPI was served with a copy of the Modified Permit on April 28, 2026, and filed this Statement of Appeal on May 15, 2026. Accordingly, this Notice and Statement of Appeal is timely filed.

BASIS FOR APPEAL

I. The Interest Substantially Affected

9. Pursuant to 7 Del. Admin. C. § 105-2.1.1, the issuance of the Modified Permit substantially affect DRPI's interests because DNREC's interpretations of its policies, and of the law, regulations, Permit, Modified Permit, and Order as applied to DRPI are contrary to law and fact, and constitute an abuse of discretion as set forth herein and in the Order Appeal. DNREC's Order imposed a 71-page Modified Permit on DRPI, effective "upon receipt," replacing a 28-page permit that had governed the Landfill since 2022. DNREC classified the Permit Modification as "minor" under DRGSW § 4.1.7.4, bypassing the public notice-and-comment procedures required

for major modifications. The Modified Permit introduces significant new obligations—including increased daily cover requirements, more stringent stormwater handling requirements, increased monitoring frequencies and analytes, increased notice requirements, and an unconstitutionally vague noise standard—that significantly change DRPI’s operational and compliance obligations. The Modified Permit is unsupported by the evidence, contrary to law, and constitutes an abuse of DNREC’s permitting authority. Further, if the Order is upheld, DRPI will be forced to immediately comply with the onerous provisions of the Modified Permit in a manner conflicting and inconsistent with provisions of the Order itself. Finally, the Order, which imposes requirements upon DRPI regarding the Modified Permit, expressly acknowledges that DRPI’s legal rights are affected. (Order at 93.)

II. The Decision is Improper

10. Pursuant to 7 Del. Admin. C. §§ 105-2.1.2 and 2.1.3, the Modified Permit is improper.

11. For the reasons set forth herein, the Modified Permit is unsupported by the evidence, is contrary to law and fact, is arbitrary and capricious and is an abuse of discretion. *See Delaware Solid Waste Auth. v. Delaware Dep’t of Nat. Res. & Env’t Control*, 250 A.3d 94, 118 (Del. 2021) (“Under 7 Del. C. § 6008, the Board reviews Agency decisions to determine whether they are supported by the evidence, free of legal error, and do not abuse discretion.”).

III. Reasons Why the Decision is Improper

12. As set forth herein, the Modified Permit is improper, not supported by substantial evidence, is contrary to law and fact, is arbitrary and capricious and constitutes an abuse of discretion for several reasons. Except as specifically stated herein, DRPI does not admit any of the allegations or legal conclusions set forth in the Modified Permit. The absence of a specific

refutation should not be construed as an admission by DRPI as to any fact or legal conclusion set forth within the Modified Permit. DRPI reserves all rights and defenses regarding the Modified Permit's provisions and/or legal conclusions.

- a. DNREC's use of the "minor modification" vehicle to circumvent public notice and comment is unsupported by the facts and law of this matter, and it constitutes an abuse of discretion.*

13. DNREC issued the Modified Permit unilaterally under DRGSW § 4.1.7.2, declaring the changes "minor" under DRGSW § 4.1.7.4 because they would not "result in any increased impact or risk to the environment or to the public health."

14. An example of a minor modification includes "[c]hanges in operation or design which do *not* involve pollution control devices or procedures." DRGSW § 4.1.7.4.1 (emphasis added). Logically, changes in operation or design that *do* involve pollution control devices or procedures would constitute major modifications, except for "[i]mprovements to approved pollution control devices or procedures." DRGSW § 4.1.7.4.2.

15. All major modifications require public notice and an opportunity for hearing. DRGSW § 4.1.7.3. It is clear that the Modified Permit conditions result in operational or design changes to pollution control devices and/or procedures at the Landfill.

16. Several of the changes mandate major modification process, including the requirement of public notice and an opportunity for hearing under 7 Del. C. § 6004(b).

17. One of the clearest examples of a major modification to the Permit lies within Condition III.DD, which modifies the Permit requirement of providing weekly cover, and now requires operation/daily cover, "over all disposed and exposed solid waste by the end of each working day."

18. Under the terms of the Modified Permit, DRPI will be required to source almost three times more cover than was required under the Permit. As described in more detail in the Order Appeal, DNREC is requiring DRPI to obtain the Department's approval for clean fill sources. That mandate has resulted in DRPI waiting between 35 days and 139 days for the Landfill to obtain source approval from DNREC. The volume of approved fill material associated with this modification is expected to escalate from 2200 tons a week to 6600 tons a week. This requirement, without an opportunity to be heard, is unsupported by the evidence, and constitutes an error of law and an abuse of discretion.

19. Another significant change can be found in Condition II.D., requiring 90-day advance notice to DNREC prior to commencing each of phase of capping construction. This requirement will significantly delay construction at the Landfill. By example, on May 6, 2026, DRPI submitted a minor request to modify the channel in the Phase 1 capping project to address DNREC's concern regarding rills. DRPI is currently prepared to begin this project; however, approval may now take up to 90 days. It should be noted that DNREC is still reviewing the original Phase 1 project, submitted by DRPI to DNREC in 2024. Comments are expected from that ongoing review by DNREC. This change underscores continuing issues faced by DRPI in addressing DNREC's concerns timely, as more fully addressed in the Order Appeal.

20. A significant change can also be found in Condition IV.C.2. The Modified Permit increases the frequency of sampling outfalls from semi-annual to monthly. In addition, the list of required parameters and reporting requirements is being expanded. The Cost of this increased frequency is expected to increase ten-fold, not including the cost of the additional parameters.

21. The Permit Modification now facing DRPI is major in nature and scope. The Permit that is the subject of the modification was issued and went into effect on May 25, 2022, and was

set to expire March 16, 2030. That Permit is 28 pages in length. The Modified Permit is 71 pages long. While some of the differences may be attributable to increased font size, there are clearly several changes in the document, which DRPI is in the process of reviewing and which may warrant amendment of this Modified Permit Appeal.

b. *The Modified Permit’s “contaminated surface water” definition is unsupported by the evidence and contrary to the Regulations Governing Solid Waste.*

22. The Modified Permit’s new “contaminated surface water” definition is also irreconcilable with the regulatory definition of the same contaminant DNREC purports to address.

23. Under the Regulations Governing Solid Waste (DRGSW), “leachate” is defined as “liquid that has passed through, contacted, or emerged from solid waste *and* contains dissolved, suspended, or miscible materials, chemicals, and microbial waste products removed from the solid waste.” 7 DE Admin. Code 1301, § 3.0 (emphasis added). The definition is conjunctive: stormwater becomes a regulated contaminant only if two conditions are satisfied: (1) the liquid has contacted solid waste, and (2) the liquid contains materials removed from that waste.

24. The Modified Permit’s definition of “contaminated surface water,” by contrast, triggers solely on direct contact with landfill wastes, effectively eliminating the second, conjunctive element required by regulation and by the Permit. A permit condition contradicting the regulatory definition it purports to implement is unsupported by the evidence and contrary to law. *See Delaware Solid Waste Auth.*, 250 A.3d at 109 (“The Secretary’s duty to issue permits ‘in accordance with duly promulgated regulations’ implies and requires the power to impose reasonable permit conditions that are *consistent with existing regulations* but lack identical regulatory antecedents.”) (emphasis added).

25. DRPI’s nine sampling events confirm that any basin water in contact with surface debris did not contain dissolved, suspended, or miscible waste products. The Modified Permit’s

contact-only trigger thus lacks an evidentiary basis: DNREC cannot point to any data demonstrating that short-duration stormwater contact with flagged or windblown debris on a landfill surface meets the DRGSW definition of leachate.

26. The Modified Permit's contact-only definition would also produce impossible results if applied as written. Every stormwater inlet in Delaware that has debris on its grate or within the contributing flow path would need to be plugged and its runoff managed as leachate. Curbside waste set out for collection on rainy days would similarly generate "contaminated surface water" requiring segregation and treatment. The Modified Permit's definition exceeds the regulatory framework and constitutes an error of law and fact.

c. The new condition governing noise is unconstitutionally vague.

27. A statute or regulation can be void for vagueness in two different ways: First, "[a] statute is void for vagueness if 'it fails to give a person of ordinary intelligence fair notice that his contemplated behavior is forbidden by the statute'" *Wien v. State*, 882 A.2d 183, 187 (Del. 2005) (quoting *State v. Baker*, 720 A.2d 1139, 1147-48 (Del.1998)). Under this type of lack-of-notice vagueness claim, the claimant must show that the statute or rule "either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application[.]" *Crissman v. Del. Harness Racing Comm'n*, 791 A.2d 745, 747(Del. 2002) (internal quotation omitted). A statute or regulation can also be void for vagueness if "it encourages arbitrary or erratic enforcement." *Wein*, 882 A.2d at 187 (quotation omitted).

28. New Condition III.V. ("Noise") compels DRPI to "operate the solid-waste facility in a manner to prevent noise generated from the solid-waste facility from interfering with any person's enjoyment of life or property." (Modified Permit at 25.)

29. This condition supplies no decibel limit, measurement methodology, time-of-day distinction, or any real threshold. Rather, it conditions compliance with a single, unidentified person's subjective enjoyment, anywhere, at any time. An industrial landfill cannot operate without generating some perceptible noise. Any neighbor, however distant or idiosyncratic, could therefore declare their "enjoyment of life or property" disturbed. This standard, again, grants DNREC unbounded discretion to find a violation whenever a single complaint is lodged, leading to "arbitrary or erratic enforcement." See *Delaware Solid Waste Auth.*, 250 A.3d at 111.

d. The Modified Permit's immediate-compliance mandate places DRPI in technical noncompliance on Day 1 and its requirements conflict with the Order's own compliance timelines, rendering DNREC's actions as arbitrary, capricious, and an abuse of discretion.

30. DNREC issued the Modified Permit on April 27, 2026, ordering DRPI to "begin using" it "upon receipt," declaring that the Modified Permit is "valid and enforceable upon receipt." (Order at 84; Modified Permit Cover Ltr. at 2.) Many of the Modified Permit's conditions are new and require time to reach compliance. From a plain reading, DRPI appears in technical violation on Day 1 even while still within the Order's compliance window. The provisions of the Order and Modified Permit when read together are inherently conflicting, erroneous as a matter of law, and place an unreasonable burden on DRPI.

31. By way example, the Secretary's Order provides DRPI 60 days to rebury waste surfaced on plateaus and slopes, cover certain waste on plateaus and slopes (Order at 88). At the same time, DNREC's Modified Permit (effective immediately upon receipt) already requires, among other cover requirements, "daily cover over all disposed and exposed solid waste by the end of each working day." (Modified Permit at 29.) If DRPI takes the 60 days afforded under the Order to complete reburial and recover, it will be deemed in technical violation of Condition III.DD for 59 days.

32. As another example, the Order gives DRPI 90 days to establish temporary vegetation on external slopes and certain areas that have received intermediate cover (Order at 89), but the Modified Permit immediately requires that “[l]ong-term intermediate cover (cover exposed for greater than 30 days) used on the sub-cells prior to final capping . . . be stabilized with vegetation or other erosion control material approved by the Department.” (Modified Permit at 37.)

33. Similarly, the Order allows the discharge of contaminated stormwater to the leachate collection system, in compliance with the October 30, 2025 NPDES Temporary Discharge Authorization (“TDA”) until April 30, 2026. (Order at 85.) The Modified Permit, however, contains an absolute diversion mandate to the leachate-collection system with no apparent ability to apply for a secondary TDA. (Modified Permit at 20.)

34. The Modified Permit cannot be simultaneously valid and enforceable upon receipt while the Order grants DRPI 30, 60, and 90 days to achieve overlapping conditions. This internal inconsistency renders the Modified Permit’s immediate compliance mandate an error of law, arbitrary, capricious, unreasonable, and an abuse of discretion.

**RESERVATION OF RIGHTS, COUNSEL, AND ESTIMATED WITNESS
NUMBER AND TIME INVOLVED**

35. DRPI reserves the right to assert additional grounds for appeal and reserves the right to amend this Statement of Appeal. Notably, DRPI was afforded only twenty (20) days under applicable rules and regulations in which to file this Appeal. This timeframe is insufficient to fully evaluate the 71-page Modified Permit and the related 98-page Order and its impact on the Modified Permit. Both documents involve several substantive factual and legal issues. Therefore, DRPI may be required to supplement this Appeal in advance of the Hearing.

36. DRPI has authorized the following attorney to represent it in this matter before the Environmental Appeals Board: Sharon Oras Morgan (Bar ID 4287), Collin Crecco (Bar ID 7502) Fox Rothschild LLP, 1201 North Market Street, Suite 1200, Wilmington, DE 19801

37. Pursuant to 7 Del. Admin. C. § 105(2.2), DRPI currently estimates that presentation of its appeal (combined with the Order Appeal) will involve 5-6 witnesses and will take between 2 and 3 days, not including any time DNREC needs to have its case heard. Depending on the volume of the entire record before the Secretary, and the parties' ability to narrow issues in advance of hearing, DRPI may be able to reduce these estimates. 7 Del. Admin. C. § 105-3.1.1. Enclosed is the \$50.00 deposit for costs required under 7 Del. Admin. C. § 105-2.3.

CONCLUSION

38. For the foregoing reasons, DNREC's decision in issuance of the Modified Permit was improper, without factual or legal basis, was arbitrary and capricious and constitutes an abuse of discretion. DRPI looks forward to presenting its appeal to the Environmental Appeals Board if no resolution with DNREC can be achieved beforehand.

REQUESTED RELIEF

39. For the foregoing reasons, DRPI respectfully requests that the Board, pursuant to 7 Del. C. § 6008(b):

a. Vacate the Modified Permit in its entirety as improperly issued without public notice and opportunity for hearing required for major modifications.

b. Vacate the Modified Permit as contrary to the Regulations Governing Solid Waste and unsupported by substantial evidence;

c. Strike or remand Modified Permit Condition III.V ("Noise") as unconstitutionally vague; and

d. Grant such other and further relief as the Board deems just and proper.

Dated: May 15, 2026

Respectfully submitted,

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